IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

WP(C).No. 21391 of 2006(V)

PETITIONER:

SAVITHA.M. AGED 31 YEARS,
W/O.N.T.MOHANDAS, "CHIRAG", AVANJIPPADAM,
AMBIKAPURAM P.O., PALAKKAD-11.

BY ADV. SRI.M.V.PAULOSE

RESPONDENTS:

1. N.T.MOHANDAS AGED 40 YEARS,
S/O.BALAKRISHNAN, "YAMUNA" THOMAS NAGAR,
KALLEKKULANGARA, PALAKKAD-9.

2. THE REGISTRAR OF BIRTHS & DEATHS,
PALAKKAD MUNICIPALITY,
PALAKKAD P.O.

3. THE CHIEF REGISTRAR OF BIRTHS &
DEATHS AND PANCHAYATH DIRECTOR, SECRETARIAT,
GOVT. OF KERALA, TRIVANDRUM.

R1 BY ADV. SRI.RAJESH SIVARAMANKUTTY
R2 BY ADV. SRI V.CHITAMBARESH
R3 BY GOVT.PLEADER SMT.T.B.RAMANI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.21391 OF 2006

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DATED THIS THE 23RD FEBRUARY, 2007

J U D G M E N T

The mother of a boy child by name Reghuram S.Mannathu is aggrieved in that the 2nd respondent-Registrar of Births and Deaths in Palakkad Municipality is refusing to register the birth of her child on account of objections raised by the 1st respondent, her husband and father of the child. The petitioner submits that the child was born on 13.8.2004 at the Co-operative Hospital, Palakkad and immediately after delivery, the hospital authorities reported the birth of the child to the 2nd respondent. The petitioner submits further that the child was named as Reghuram S.Mannath and immediately on naming the child, that matter was also reported to the 2nd respondent by the petitioner. She points out that the child is under her custody, since about six months before the birth of the child she had separated from her husband-1st respondent. On 24.12.2004, the petitioner's father applied to the 2nd respondent for a certificate of the extract of the birth register of the child but that application was rejected on the ground that the 1st respondent had sent a letter on 20.9.2004 objecting to the entry of the name of the child in the register unless it be on the basis of a joint application by the petitioner and the 1st respondent. Later,

on 4.7.2005, the petitioner herself made a request for birth certificate. That request was also rejected on the same reason. But when the petitioner applied again on 21.7.2006 requesting for a birth certificate of the child, what the 2nd respondent did was to issue a certificate without showing the name of the child and informing the petitioner through a letter that the name of the child cannot be entered in the register unless she produces a court decree appointing her as the legal guardian of the child. Ext.P1 is copy of the forwarding letter and Ext.P2 is copy of the certificate which does not contain the name of the child. On the above averments, the petitioner raises as many as five grounds and prays that a writ of mandamus be issued commanding the 2nd respondent to issue a birth certificate of the child of the petitioner registered as per Register No.7828/04 endorsing the name of the child as 'Reghuram S.Mannath'.

2. The first respondent, the father of the child has filed a very detailed counter affidavit. His marriage with the petitioner and birth of the child out of that wedlock is conceded. It is submitted that the petitioner and the 1st respondent lived together only for a short while. When the petitioner who is a Nurse by profession expressed a desire to work abroad, the 1st respondent was not agreeable since there are

good avenues at Palakkad itself for the petitioner and there was an agreement between the parties even prior to the marriage that the petitioner will not seek employment abroad. The first respondent contends that the stand of the 1st respondent was to the displeasure of the petitioner who it is alleged started behaving in a manner which is unsuitable and unbecoming of a responsible wife. It is pointed out that the parties belong to different communities, the petitioner being a Nair and the 1st respondent a Pulaya and it is alleged that the 1st respondent is often ridiculed and made to suffer mental agony by the petitioner on account of her caste complex. It is stated that neither the 1st respondent nor the members of his family were informed about the birth of the child on 13.8.2004. The 1st respondent came to know about the birth of the child only through a friend. The 1st respondent's attempts to see the child were also thwarted by the petitioner and members of his family who foisted what is described as a false case for maintenance before the Chief Judicial Magistrate Court, Palakkad. Ext.R1(1) is copy of the order passed by the C.J.M., Palakkad in M.C.No.77 of 2004 filed by the petitioner. Since the 1st respondent was being prevented from seeing the child he filed Ext.R1(2) G.O.P. before Family Court, Palakkad. The present Writ Petition it is contended is yet

another endeavour on the part of the petitioner to deny the 1st respondent the joys of fatherhood. The first respondent submits that as per the custom prevalent in his community as also in the community of the petitioner, the surname of the child should be that of the father or the tharavad of the father. It is pointed out that even the petitioner has her father's name as her surname as in the case of the 1st respondent. Therefore the insistence of the petitioner that the child should have the surname 'Mannath' which is the tharavad of the petitioner's father cannot be justified. The adoption of maternal grandfather's tharavad name as surname is opposed to all conventions and practices.

3. Very heated submissions were addressed before me by Mr.M.V.Paulose, counsel for the petitioner and Mr.Rajesh Sivaramankutty, counsel for the 1st respondent. Mr.V.Chitambaresh, Standing Counsel for the Palakkad Municipality entered appearance on behalf of the 2nd respondent.

4. My attention was drawn by Mr.Paulose to the averments in the Writ Petition and to Section 14 of the Registration of Births and Deaths Act, 1969 and also to Rule 10 of the Kerala Registration of Births and Deaths Rules, 1999. Counsel also drew my attention to Section 6 of

the Hindu Minority and Guardianship Act, 1956.

5. Mr.Rajesh Sivaramankutty, counsel for the 1st respondent making submissions on the basis of the counter affidavit referred to circular No.B1-15361/97 dated 15.7.1997 issued by the Director of Panchayats submitted that the 2nd respondent is justified in insisting on a joint application by both the parents. According to him, the 1st respondent is admittedly the father of the child and what he is opposed to is the idea of his child bearing the tharavad name of his father-in-law as surname. The petitioner is not a Marumakkathayee but only a Vilakithala Nayar. The 1st respondent and the petitioner, learned counsel submitted are both Makkathayees and going by conventions the child ought to carry either the name of the father or the tharavad name of the father as surname. It will be unjust to deny to the 1st respondent that right in view of the undeniable position that the 1st respondent is the natural guardian of his child in terms of Section 6 of the Hindu Minority and Guardianship Act, 1956.

6. Replying to the above submissions, Mr.Paulose would submit that the petitioner and the 1st respondent have now arrived at a compromise to have their matrimony dissolved by a decree of divorce by mutual consent. The understanding between the parties, learned

counsel submitted, is that the child will continue to be under the custody of the mother.

7. Section 14 of the Registration of Births and Deaths Act, 1969 provides as follows:-

> "**14. Registration of name of child.--** Where the birth of any child has been registered without a name, the parent or guardian of such child shall within the prescribed period give information regarding the name of the child to the Registrar either orally or in writing and thereupon the Registrar shall enter such name in the register and initial and date the entry."

Rule 10 of the Kerala Registration of Births and Deaths Rules, 1999 reads as follows:-

> **"10. Period for the purpose of Section 14.--** (1) Where the birth of any child had been registered without a name, the parent or guardian of such child shall, within 12 months from the date of registration of the birth of child, give information regarding the name of the child to the Registrar in writing;
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> Provided that if the information is given after the aforesaid period of 12 months which shall be reckoned, subject to the provisions of sub-section (4) of section 23, the Registrar shall enter the name in the relevant column of the concerned form in the birth register on payment of a late fee of rupees five.

> (2) The parent or the guardian, as the case may be, shall also present to the Registrar the copy of the extract given to him under Section 12 or a certified extract issued to him under section 17 and on such presentation the Registrar shall make the necessary endorsement relating to the name of the child."

It is thus clear that both as per the statute and the statutory rules, it is not necessary that application for registration of a child's birth including the name of the child should be submitted jointly by both the parents. The application can be submitted by either of the parents or by the guardian and Section 14 of the Statute states that information regarding the name of the child can be furnished even orally to the Registrar who shall thereupon enter the name in the register and initial and date the entry. Circular No.B1-15361/97 dated 15.7.1997 issued by the head of the Panchayat Department cannot override the statutory provisions.

8. But the grievance of the 1st respondent that his child is being compelled to bear the tarwad name of his father-in-law against his wishes cannot go unnoticed. I am of the view that the child must be given the option to adopt whichever tarwad name he chooses when he attains majority.

Under these circumstances, I dispose of the Writ Petition

directing the 2nd respondent to issue a birth certificate of the child of the petitioner and the 1st respondent, already registered vide Registration No.7828/04, endorsing the name of the child as Reghuram S.M.; 'S' will stand for Savitha; 'M' will not be expanded for the time being. The child will, when he attains majority, expand it either as Mohandas (his father's name) or as Mannath. I record the submission of the petitioner that the paternity of the child has never been in doubt and that the 1st respondent is the father of the child by name Reghuram.

tgl/srd (**PIUS C.KURIAKOSE, JUDGE)**